

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 07-28

January 9, 2007

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: New E-Filing Initiative with the Office of Appeals  
and Revised Appeals Language

On November 15, 2006, OM 06-96 (3<sup>rd</sup> Revised) announced that commencing on November 17, 2006, parties are permitted to submit electronically an appeal to a Regional Director's 1) refusal to issue complaint, and 2) compliance determination via the Agency's redesigned Website. An appeal may be filed at [www.nlr.gov](http://www.nlr.gov), under "**E-GOV**" by selecting "**E-filing**" and then clicking on "**File an Appeal or Other Document**" under the heading "**General Counsel's Office of Appeals.**" The PROCEDURES FOR FILING AN APPEAL OF A COMPLIANCE DETERMINATION form (Form NLRB-5436), has been revised to include instructions for E-filing on the Website. Additionally, the COMPLIANCE DETERMINATION APPEAL FORM (Form NLRB-5434) has been updated.

Forms NLRB-5434 and 5436 as revised are attached. The revised forms can also be found in the Web Forms Library on the Intranet. Also attached is revised appeal language that should be used in all Compliance Determinations. If you have any questions regarding this memorandum, please contact your Assistant General Counsel or Deputy or the undersigned.

/s/  
R.A.S.

Attachment

cc: NLRBU  
Release to the Public

MEMORANDUM OM 07-28

United States of America  
National Labor Relations Board

COMPLIANCE DETERMINATION APPEAL FORM

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
Room 8820, 1099 14<sup>th</sup> Street, N.W.  
Washington, DC 20570

Date:

Please be advised that an appeal is being taken to the General Counsel of the  
National Labor Relations Board from the compliance determination of the Regional  
Director in:

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*Case Name(s).*

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*Case No(s). (If more than one case number, include all case numbers in which appeal  
is taken.)*

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*(Signature)*

United States of America  
National Labor Relations Board

PROCEDURES FOR FILING AN APPEAL  
OF A COMPLIANCE DETERMINATION

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this compliance determination by FILING AN APPEAL with the **GENERAL COUNSEL** of the National Labor Relations Board, Attn: Office of Appeals, Room 8820, 1099 14th Street, N.W., Washington, D.C. 20570-0001, and a copy with the **REGIONAL DIRECTOR**.

This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C. by the close of business at **5:00 p.m., [EST or EDT, as appropriate] on [14 days from issuance]**. However, if you mail the appeal, it will be considered timely if it is postmarked no later than one day before the due date.

An appeal may also be filed electronically by using the e-filing system on the Agency's Website. In order to file an appeal electronically, please go to the Agency's Website at [www.nlr.gov](http://www.nlr.gov), select **E-Gov** and click on **E-Filing**. On the next page, under **General Counsel's Office of Appeals**, select **File an Appeal or Other Document**. The Website will contain detailed instructions on how to file an appeal electronically. If you file the appeal electronically, it must be received by the General Counsel by the close of business at 5:00 p.m. {EST or EDT, as appropriate} on the due date. A failure to timely file an appeal electronically will not be excused on the basis of the claim that transmission could not be accomplished because the receiving machine was off-line or unavailable, the sending machine malfunctioned, or for any other electronic-related reason. The appeal may not be filed by facsimile transmission.

Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. You may file a request for an extension of time to file by mail, facsimile transmission, or through the Internet. The fax number is (202) 273-4283. Special instructions for requesting an extension of time over the Internet are set forth in the attached Access Code Certificate. While an appeal will be accepted as timely filed if it is postmarked no later than one day prior to the appeal due date, this rule does not apply to requests for extensions of time. A request for an extension of time to file an appeal must be received on or before the original appeal due date. A request that is postmarked prior to the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed through the Internet, a copy of any request for extension of time should be sent to the Regional Director.

Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Further, we are required by the Federal Records Act to keep copies of documents used in or case handling for some period of years after a case closes. Accordingly, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial

information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(d), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Appeal Form (NLRB-5434) and send one copy of the form to all parties whose names and addresses are listed.

## Appeal Language for Compliance Determinations

***Your Right to Appeal:*** The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-5434) will satisfy this requirement. However, you must also submit a complete statement setting forth the facts and reasons why you believe this Compliance Determination is incorrect.

The appeal may be filed by regular mail addressed to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14<sup>th</sup> Street, N.W., Washington D.C. 20570-0001. A copy of the appeal should also be mailed to the Regional Director.

An appeal may also be filed electronically by using the E-filing system on the Agency's Website. In order to file an appeal electronically, please go to the Agency's Website at [www.nlrb.gov](http://www.nlrb.gov) and select the **E-Gov** tab and click on **E-Filing**. Scroll to the *General Counsel's Office of Appeals*. Select the type of document you wish to file electronically and you will navigate to detailed instructions on how to file an appeal electronically.

The appeal MAY NOT be filed by facsimile transmission.

***Appeal Due Date:*** The appeal must be received by the General Counsel in Washington D. C. by the close of business at 5:00 p.m. (EDT) on [the due date]. If you mail the appeal, it will be considered timely filed if it is postmarked no later than one day before the due date set forth above. If you file the appeal electronically, it must be received by the General Counsel by the close of business at 5:00 p.m. (ET) on [the due date]. A failure to timely file an appeal electronically will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or unavailable, the sending machine malfunctioned, or for any other electronic-related reason.

***Extension of Time to File Appeal:*** Upon good cause shown, the General Counsel, may grant you an extension of time to file the appeal. You may file a request for an extension of time to file by mail, facsimile transmission, or through the Internet. The fax number is (202) 273-4283. Special instructions for requesting an extension of time over the Internet are set forth in the attached Access Code Certificate. While an appeal will be accepted as timely filed if it is postmarked no later than one day prior to the appeal due date, this rule does not apply to requests for extension of time. A request for an extension of time to file an appeal **must be received** on or before the original appeal due date. A request that is postmarked prior to the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed through the Internet, a copy of any request for extension of time should be sent to me.

**Confidentiality/Privilege:** Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Further, we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes. Accordingly, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(D), 5 U.S.C. § 552(b)(4), (6), (7)(C), and 7(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

**Notice to Other Parties of Appeal:** You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is mailed to the General Counsel, please complete the enclosed Appeal Form (NLRB-5434) and send one copy of the form to all parties whose names and addresses are set forth in this letter.